IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1057 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
GHANSHYAM MOHANLAL JAGANI - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
MR KJ SHETHNA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 01/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 31.5.86 passed by the Special Judge, Rajkot District, Rajkot in Special Criminal Case No.4 of 1985, whereby the Special Judge had acquitted the accused from the offences punishable under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947.

2. The short facts giving rise to this appeal are such that :

The accused – Ghanshyam Mohanlal Jagani was working as Octroi Clerk in the Rajkot Municipal Corporation and on 28.8.1984, he was working in the above said capacity at Octroi cabin situated on Saint Kabir Road within the city of Rajkot. Shri N.N.Nagar, P.S.I., A.C.B., Rajkot had received information from reliable sources that octroi clerks attached to the above said octroi cabin receive illegal gratification from the dealers and they allow certain goods and

articles to enter into the city without recovering the octroi charges on the same. Therefore, Shri Nagar arranged for trap and after completing the necessary formalities, filed a complaint against the accused. Thereafter, necessary sanction was obtained and the accused was charge sheeted before this Court.

3. The Special Judge, Rajkot framed the charge against the accused and it was read over to the accused and as the accused pleaded not guilty and claimed to be tried, after recording the evidence and hearing the learned counsel for both the sides, acquitted the accused from the offences punishable under Sections 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947, against which the present appeal is filed.

4. Heard Mr.K.C.Shah, learned APP for the appellant – State and Mr.K.J.Shethna, learned advocate for the respondents – accused.

5. The judgment is challenged on various grounds mentioned in para 6 of the memo of appeal.

Mr.K.C.Shah, learned APP has taken us through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

6. The learned trial Judge, while appreciating the evidence of panch witness Chandrakant Pandya, the decoy or bogus dealer Chimanlal Soni and P.S.I.Nagar has given the finding that they tried to support the case of each other in respect of the demand and acceptance of the illegal gratification but serious complications have been created by the receipt at Sr.No.37 in the Ayat book at Exh.19 and same complications have been created in parallel by Schedule No.2. The learned trial Judge has come to the conclusion that the receipt at sr.no.37 at exh.19 was prepared by the accused at 4.45 p.m., after accepting the octroi charges from the driver of the matador van. In this connection, the learned trial Judge further observed that according to the case of the prosecution, panch no.1 had entered in the octroi cabin at 4.30 p.m., to 4.35 p.m., the receipt is issued to the matador driver at 4.45 p.m., which would probabilize the defence version that the

accused had demanded the octroi charges in the sum of Rs.130/- and had asked the Decoy Chimanlal to fill in the form at Exh.18 but the said Chimanlal left the cabin after placing the currency notes on the form on the table and, thereafter, the raid was made only after 4.45 p.m.

7. The learned trial Judge further gave the finding that the evidence becomes dubious and doubtful because of the contrary version of the panch witness, bogus dealer and the investigating officer regarding the entry of the driver of the Matador van in the octroi cabin, because of which serious complications and hurdles are created in the way of prosecution case by the receipt in the Ayat book at Exh.19 and form no.2 at Exh.18.

8. The learned trial Judge has also come to the conclusion that the trap in this case was illegitimate one because the offence was yet not born and a temptation was to be given to the accused to see as to whether he would succumb to the temptations or not. Therefore, the witnesses would not be better

than the accomplices and their evidence cannot be accepted unless corroborated in material particulars and the evidence of the witnesses is not corroborated in material particulars, but on the contrary, it is shaken from the very foundation because of the documentary evidence on record.

9. The learned trial Judge has further come to the conclusion that there is no extraneous material wholly independent of the police mechanism to show that the accused had demanded and accepted the illegal gratification, on the contrary, the extraneous material in the form of Exh.18 and 19 would go to destroy the case of the prosecution.

10. In view of the above, we do not find any perversity or illegality in the findings. It is now settled that when the appellate forum is in agreement with the reasons assigned by the lower court, then it is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence.

We are of the opinion that this cannot be said to be rare case where the acquittal is required to be converted into that of conviction.

11. In view of the foregoing discussion, the following order is passed.

12. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(C.K.Buch,J)

(Sharad D.Dave,J)

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